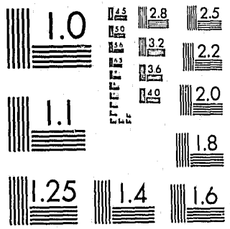

POLICE JUVENILE PROCEDURES MANUAL

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Prepared for

The Office of Juvenile Justice
and Delinquency Prevention

U.S. Department of Justice

This document was prepared by the Youth Law Center under subcontract to the Community Research Center of the University of Illinois at Urbana-Champaign, prime contractor for J-012-81 awarded by the Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice. Points of view and opinions stated in this document do not necessarily represent the official position of the U.S. Department of Justice.

November, 1983

For further information regarding the contents of this document contact:

Community Research Center
University of Illinois at Urbana-Champaign
505 East Green Street, Suite 210
Champaign, IL 61820
217/333-0443

Youth Law Center
1663 Mission Street
Fifth Floor
San Francisco, CA 94103
415/543-3379

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INTRODUCTION

This manual is designed to provide an overview of the law relating to juvenile proceedings. It focuses primarily on arrest and detention procedures because these are of concern to police officers who work with juveniles. For similar reasons, it is focused on delinquency proceedings and deals only tangentially with dependent children or status offenders. The manual does not provide specific instruction in State law, rather, it describes Federal constitutional rulings that affect treatment of juveniles.

The purpose of this manual is to alert the police officer to differences between juvenile delinquency proceedings and the adult criminal system. These differences arise because the purpose of the juvenile justice system is the provision of treatment, and because children are not always capable of understanding or asserting their legal rights. This booklet uses the case method to highlight areas of concern to the officer dealing with juveniles. The manual assumes that the police officer is familiar with basic principles of adult criminal procedure.

The manual should assist the officer in achieving three primary goals: first, protecting the safety and well-being, and assisting in the eventual rehabilitation of the child involved; second, protecting the safety of the public by ensuring that adjudications obtained are not subject to constitutional challenge; third, protecting the officer and the department from civil liability resulting from inadvertent violations of children's constitutional rights.

CHAPTER 1

ARREST, INTERROGATION, SEARCH, AND DETENTION

ARREST

Mrs. Wilson calls the police station to report that Jeff Jones was trespassing on her property. The next day, Officer A sees Jeff walking down the street. With him is a teenage girl whom Officer A does not recognize. The girl is somewhat dirty and gives the appearance of having been on the streets for several days. No warrant has been issued for either Jeff or the girl accompanying him. Officer A arrests Jeff and the girl with him. He charges Jeff with burglary and theft. He arrests the girl on suspicion of being a runaway.

Are either of these arrests valid?

The United States Supreme Court, in In re Gault, held that many of the procedural rights possessed by an adult at a criminal trial also were possessed by a juvenile at a delinquency adjudication. It did not decide whether a child has the same rights as an adult at other stages of a prosecution, for example, arrest. Most courts that have reviewed the issue, however, have decided that a child has many of the same rights as an adult in an arrest. Since, from the facts given, a warrant would be required in most States to arrest an adult in Jeff's situation, Officer A would also need a warrant to arrest Jeff. The requirements for obtaining the warrant are the same as those for obtaining a warrant for an adult.

The arrest of Jeff's friend is more complicated. Many State statutes provide broad, vague guidelines regarding the criteria for arresting a child on the grounds of incorrigibility, or being a runaway. In those States, the time of day when the child is on the streets, the company she is keeping, and other factors all may be grounds for detaining her.

However, these State statutes are open to constitutional challenge on the grounds of vagueness. The girl in this instance has committed no criminal behavior and does not seem to be in immediate danger. An arrest under these circumstances could be held to be invalid because it violates her Fourth Amendment rights. This is in harmony with the general tendency to grant more procedural rights to juveniles.

Of course, when dealing with children, a police officer is always aware of potential danger to the children themselves. State legislatures and courts have recognized this fact by authorizing the arrest of children for their own protection. A reasonable regard for the child's rights requires that the child be in actual, rather than speculative, danger. Nevertheless, it is fair to say that, at this point, the law regarding arrest of juveniles for their own protection is more permissive than that regarding the arrest of adults.

CUSTODIAL INTERROGATION

> Officer B has arrested Amy, Betsy and Karen after he found them in a stolen car. All three girls are at the station house. Officer B decides to question each girl separately. He asks Amy, who is 15 years old, what happened, and she tells him that she planned to take the car for a joy ride and then return it. He gives Betsy, who is 12, the Miranda warnings and then asks her what happened. She admits to being in on the plan to take the car. Finally, he gives Karen, age 13, the Miranda warnings and asks her what happened. Karen asks that her mother be with her before she talks to the police. The officer tries to call her mother, who is not home, and tells Karen, "Your mother isn't home, you'd better tell me anyway." Karen then tells him that she was also part of the plan.
>
> Which, if any, of these confessions can be used in an adjudicatory hearing?

As with any confession, the State must prove that a child's confession was voluntary before it may be admitted into evidence. Because a child's understanding of police procedure is limited, and because he or she may be easily intimidated by authority, it is sometimes more difficult to prove that a child's confession was voluntary.

The United States Supreme Court has not ruled definitively that Miranda warnings must be given to a child in custody. However, every court which has considered the issue has determined that, when police officers conduct a custodial interrogation, they must give Miranda warnings to a child. Thus, Amy's confession would probably not be admissible into evidence. So far, the law is similar to that which would apply in the case of an adult.

In determining whether a waiver of Fifth Amendment rights by a child after Miranda warnings are given is voluntary (Betsy's case), courts look to the totality of the circumstances. The United States Supreme Court approved the approach in Fare v. Michael C. Some of the factors that are considered in using this test are: the age and education of the child, the understanding of the child of the Miranda warnings, and of the charges, the methods used in interrogating the child, the length of the interrogation, whether the child has had advice by a counselor or another adult, whether the child has refused

to answer previously, or has previously repudiated other statements. Some States, for example, Louisiana and Pennsylvania, invalidate any waiver of Fifth Amendment rights by a child unless he or she has the advice or counsel of an adult. In this case, Betsy's youth would be one factor to consider. Her prior contacts with the juvenile justice system would also be significant. The fact that the officer did not seem to use undue force in convincing her to confess or, in fact, use any form of psychological pressure, would weigh toward making the confession admissible.

In Fare, the Supreme Court decided that a child's request to speak to his probation officer was not the equivalent of asserting his Fifth Amendment rights. It left open the question of whether a child's request for an attorney or parent (like Karen's for her parent) would invalidate any statement made in the absence of the attorney or parent. As noted above, in some States, a child's confession is not voluntary unless a parent is present. In other States, the request for a parent invalidates any confession made subsequent to the request. In those States, Karen's confession could not be used in an adjudicatory hearing. Had Karen requested a lawyer, her confession would certainly be invalid. In almost any State, a defense attorney will challenge a confession made in the absence of a parent after the request for a parent was made.

Regardless of State law, the safest procedure, from the point of view of obtaining a valid confession, is to try to locate a parent, attorney, or other interested adult to be with the child during any interrogation. If no attorney, parent, relative, or friend is willing to accompany the child, interrogation should only continue if the child is relatively sophisticated about the system, has attained a reasonably high educational level, and is old enough to understand the process. Any confession obtained from an unaccompanied child who is 14 years of age or younger is questionable.

SEARCH AND SEIZURE

> Officer C receives information that Danny is selling marijuana and has a substantial quantity of marijuana in his car. Officer C goes to Danny's parents' home. He asks Danny and his parents if he may look inside the car. Danny, who owns the car, which he bought with money he earned on a summer job, says the officer may not search the car. Danny's parents say the officer may search the car. The officer searches the car and finds marijuana.
>
> Is this search valid?

There has never been a United States Supreme Court decision holding that either juveniles have the same Fourth Amendment rights as do adults or that the exclusionary rule applies to juvenile proceedings. However, those State and Federal courts that have dealt with the issues have assumed, either directly or by implication, that it does. A warrantless search of a juvenile's property is,

therefore, valid only if there are exigent circumstances or if the juvenile consents to it. Of course, as in the waiver of Miranda rights, the consent must be voluntary.

In some cases, a juvenile's parents may consent to a search for him or her. For example, parents may consent to the search of common areas of a home. They may, in some States, also consent to the search of a child's room, if that room is accessible to the rest of the family. In most cases, however, parents cannot consent to a search of the child's property, if that property is not shared by the rest of the family. Thus, the warrantless search of Danny's car was not validated by his parents' consent. Of course, if any of the exceptions to the warrant or consent requirements for adult searches apply in this case, the search would be constitutional.

In many cases, the child would require the advice of an adult before making a valid waiver of his or her rights. In this case, Danny seems to be old enough to consent to a search. However, a young, inexperienced child may not be capable of giving voluntary consent on his or her own, just as he or she is not capable of waiving Miranda rights.

DETENTION

Officer Q. has arrested Rick, Steve and Tommy for burglarizing a house. All three boys live in the community. Rick has previously been adjudicated delinquent. Steve has been arrested, but has not been adjudicated delinquent, and Tommy has never been involved with the system before.

Should Officer Q. detain or recommend detention of these children? If they are detained, where should they be detained?

Deciding Whether Detention Is Necessary

Careful exercise of police discretion is particularly important when deciding how to handle a child after arrest. One purpose of most juvenile codes is to provide protection, guidance, and treatment to children, and confinement must serve this purpose. In addition, a child is deprived of certain procedural rights because the juvenile system claims to provide treatment. To compensate for this deprivation, this treatment must actually be available. The child, therefore, has a right to treatment.

This right to treatment includes a right to confinement in "the least restrictive alternative." The least restrictive alternative is the placement that restricts the child's liberty least, consistent with the child's individual needs.

In order to comply with this right, the police officer, or other individual making decisions about whether and where to detain a child, should explore both the child's background and possible placements for the child. In working with children, a police officer (or, in some States, a probation officer) has more alternatives than are available in working with an adult. First, the officer may decide to release the child without taking any official action. Second, the officer may decide to release the child and file an official report of the incident. Third, the officer may book the child, but release him to his parents, a relative, or a community service agency, or cite the child to appear in court, but without detaining him or her. Finally, the officer may refer the child to the probation department for detention, or detain the child on his own.

Deciding which alternative to use is a difficult task. In small communities, where the officer knows the child's family, he or she may be able to make a reasoned judgment about the likelihood that the child will appear in court, and be adequately cared for in his home. In large urban departments, this information is not so readily available. For this purpose, most departments have developed an intake form which provides information about the family. In some communities, this task is left to a probation officer, who decides whether or not to detain a child.

Most police or probation departments have developed criteria for determining whether any form of out-of-home placement is necessary, and if the child cannot return home, whether he or she should be in a secure or nonsecure setting. The Metropolitan Police Department of Washington, D.C., has established a Guide for Police Officers in the Handling of Juveniles, quoted in "Juvenile Justice Guidelines for Police," published by the Office of Juvenile Justice and Delinquency Prevention. These guidelines are typical of criteria for detention set up in other jurisdictions, and could be used as a model for those communities where such guidelines do not exist. The criteria are as follows:

(1) The Nature of the Offense--When considering the nature of the offense as a criterion for diversion, the officer examines the act to determine: seriousness; degree of bodily harm to the offender or others; degree of criminal sophistication, i.e., use of burglary tools, or weapons in the commission of the offense; and the desire of the victim to prosecute. Also included in this category is a classification of the juvenile which could be any one of the following: status offenders--those children who commit acts which would not be criminal if committed by an adult, i.e., truants and runaways; incorrigibles--those children who are disobedient or sexually promiscuous; first offenders; misdemeanants; or serious juvenile delinquents--those children committing felonies against persons or serious felonies against property.

(2) Age of Defendant--Age of the defendant plays an important part in any decision to divert, but since intellectual and emotional maturity do not progress hand-in-hand, age alone should not be the sole criterion used to determine if diversion is appropriate.

(3) Employment and/or Family Responsibilities of the Defendant--For example, if a juvenile misdemeanant or first offender is employed, and his employment would be jeopardized in the event he is adjudged a delinquent, this fact should be given serious consideration when the decision whether or not to divert is made.

(4) Nature of the Problem Which Led to the Offens --In many cases, the commission of the offense is motivated by e.. ional, psychological, physical, or educational problems. Knowledge of the juvenile's need for professional assistance with social and/or personal problems should be a deciding factor in the decision to divert the child.

(5) Attitude of Defendant Toward Self-Improvement--The juvenile's attitude and willingness to cooperate in his own rehabilitation are important factors to be considered.

(6) Availability of Community-Based Rehabilitation Programs.

(7) Parental Responsibility--A decision to divert a juvenile must consider the parents' awareness of the seriousness of their child's involvement with the police, and their ability to control and discipline their child.

The use of these or similar guidelines will frequently result in a lowered rate of detention for juveniles. It also provides a rational basis for detention decisions, and so protects police departments against charges that they arbitrarily, or discriminatorily detain juveniles. Even in small communities, such guidelines should be followed to avoid unintentional effects of personal familiarity with a child or his family.

It is equally important that a police or probation officer be familiar with all the resources in his community. This means, not only the juvenile detention center, but also group homes, emergency foster care, and other residential alternatives for children who are unable to remain at home. For those who have a home available, home detention is often a reasonable alternative. The next section describes these alternatives which may exist in your community.

Alternatives to Secure Detention

In communities without alternative programs to secure detention, the boys described at the beginning of this section could needlessly be placed in a juvenile detention facility, or an adult jail. But many communities have developed both nonresidential and residential community-based programs. Such programs relieve overcrowding of detention facilities, and can reduce detention costs substantially, with no significant rise in recidivism rates or failures to appear in court proceedings. Most importantly, these programs work toward keeping the family intact, with either the child living at home,

or the family engaging in therapy, while the child resides in a foster or group home in the community. Referrals to these programs come not only from the court, but also from law enforcement agencies, probation, welfare departments, private agencies, and the schools.

Nonresidential programs include diversion programs, which provide crisis intervention, and intake and referral. Besides 24-hour screening and crisis intervention, counseling and follow-up services, some programs have, as a last-ditch measure, the option of referring the child for residential services. Diversion programs are geared toward children charged with status offenses and first time offenders. Home detention, another nonresidential program, involves intensive prehearing supervision of a child living at home. Community workers, usually paraprofessionals, make personal contact with the child once a day. They also contact daily, by telephone or in person, the child's school teachers, employers, and parents. Through this close supervision, community workers are expected to assist the assigned child in keeping out of trouble, and being available to the court. Otherwise, the worker is authorized to send the child to secure detention.

Residential, community-based alternatives to secure detention vary in purpose, operation, size, by the types of children they serve, from community to community, and even within a community. Foster care is distinguished from group homes by the number of children housed and by the more home-like environment it provides. In addition to traditional foster homes, some communities have emergency foster homes where a child can be placed in lieu of secure detention.

Children placed in group homes as an alternative to secure detention may be there a short or long period of time, depending on the problems of the child. Group homes may provide a home-like atmosphere, treatment by staff or contractual professional services, recreational activities by staff or volunteers, and supervision both by staff and group pressure.

Some or all of the programs may be available in each community. Police officers should be aware of them and make efforts to use them as alternatives to detention whenever possible. Any of these alternatives is preferable to detention in jail. Jails are dangerous for children and serve to inhibit, rather than encourage, treatment. In addition, as discussed below, police officers may be liable for injuries a child receives while in jail.

BAIL AND PREVENTIVE DETENTION

> Willie Smith appears in court at a detention hearing. The arresting officer believes, and has noted in his report to the probation officer, that Willie has been involved in a series of burglaries. The police officer believes that Willie may commit additional crimes if he is released. Willie's parents are in court with him and are willing to take him home. Willie has been charged twice before and has always appeared on time for court.

Must the judge set bail for Willie and release him on bail? May the judge detain Willie simply because he is likely to commit further crimes (preventive detention)?

The United States Supreme Court has not ruled on whether bail is constitutionally required in juvenile cases. Some State courts have decided specifically that children do not have a right to be released on bail. Other States authorize bail to be set at the discretion of the juvenile court. Still others require that bail be set. Many courts have taken the position that, because the juvenile system is designed to protect and treat juveniles, and because most juveniles systems have elaborate release procedures, bail is not required.

On the other hand, preventive detention is probably not constitutional. A major challenge to preventive detention was made in Martin v. Strasburg, a Second Circuit case that held New York's preventive detention statute to be unconstitutional. In light of this case, successful constitutional challenges to other, similar statutes can be expected.

Detention of children for their own protection is permissible in most States. This form of detention is permissible because juvenile proceedings are not criminal in nature, but rather, serve the purposes of treatment. As mentioned above in the section on arrest, there must be clear evidence that the child is in danger. Protective detention cannot serve as a cover for preventive detention.

CHAPTER 2

PROBABLE CAUSE, ADJUDICATION, AND DISPOSITION

PROBABLE CAUSE

Suzanne has been arrested on charges of battery. She is in a detention center.

Does Suzanne have a right to a probable cause hearing?

Under certain State statutes, Suzanne does have a right to a probable cause hearing, if she is in detention. In other States, she has a right to a hearing before a petition is filed. The U.S. Supreme Court has not held that juveniles have a right to a probable cause hearing prior to an adjudication.

In those States in which juveniles do have a probable cause hearing, the hearings do not necessarily involve all the procedural safeguards of adult due process hearings. For example, in California, a finding of probable cause can be made on the basis of hearsay statements.

The failure to provide probable cause hearings to children is open to constitutional challenge on the grounds of both due process and equal protection. In particular, the failure to permit confrontation of witnesses may be challenged. Therefore, while police officers are now, in many States, not required to be present at probable cause hearings for juveniles, in the future this policy may be changed.

ADJUDICATION

Bobby has been accused of committing an act that would be a crime were he an adult. The prosecutor files a petition, and an adjudicatory hearing (trial) is scheduled.

What procedural rights does Bobby have in the adjudicatory hearing?

Bobby is entitled to adequate notice of the scheduled proceedings and the nature of the conduct alleged, representation by counsel, proof of his guilt beyond a reasonable doubt, and confrontation and cross-examination of witnesses. In some States, Bobby would also have the right to a trial by jury. The rights enumerated above are specifically guaranteed to Bobby and all juveniles by the Supreme Court's decision in In re Gault.

In all States, under Gault, the child must be given notice of the charges against him, and the date and time of the hearing. In most States, the child's parents also must be given notice of these charges. This notice must be given to the child and parents sufficiently far in advance of the hearing so that they will have time to prepare for and attend the hearing. The notice must also give clear information about the charges brought against the child.

In all States, children charged with delinquent acts have a right to counsel. In many States, children charged with status offenses also have a right to counsel.

In In re Winship, the Supreme Court determined that, in delinquency proceedings, the charges must be proven beyond a reasonable doubt. This holding was based on the fact that children may be confined to State institutions on the basis of a delinquency adjudication. In some States, status offense also must be proved beyond a reasonable doubt.

At an adjudicatory hearing, children are entitled to an opportunity to confront and cross-examine witnesses. In all States that have dealt with the issue, the child has a right to be present at the hearing.

Children do not have a constitutional right to a jury trial. In McKeiver v. Pennsylvania, the U.S. Supreme Court held that a jury trial was not essential in juvenile proceedings because the use of a jury might undermine certain purposes of the juvenile court, including maintenance of confidentiality and provision of treatment. However, many States have, by statute or court decision, granted children a right to jury trial. The absence of a right to jury trial is the most significant difference between a juvenile court adjudication and an adult criminal trial.

Because the denial of the right to a jury trial is based on the premise that juvenile court proceedings are designed to provide treatment, dispositions in juvenile court must be aimed at rehabilitating (treating), rather than punishing the child.

DISPOSITIONAL ALTERNATIVES

> John is sixteen years old and lives at home with his parents. He has just been adjudicated delinquent a fourth time. The majority of his offenses have been for burglary or larceny.
>
> Is John's only alternative the State training school?

Because of the emphasis on treatment or rehabilitation of the youthful offender, a variety of innovative approaches have been developed for working with the juvenile offender. One such program is an independent living program aimed at older adolescent youths. Program staff assist in the placement and

supervision of the youth in independent living facilities such as the YMCA and apartments. Some programs focus primarily on education, and provide an individualized and intensive remedial education program, as well as counseling for each child to improve their educational and social adjustment skills. Such programs allow the child to live at home while experiencing a positive learning environment, so that parents can become involved in the program. Restitution programs also allow a youth to stay in the community while being rehabilitated. One program places youths in jobs where they receive training, counseling, and supportive services over a period of time. During that period, the youth pays the victim money, which constitutes the restitution for the crime that was committed.

Other alternatives to secure confinement are variations on existing programs. In one program, a child is matched with a volunteer counselor after the probation staff has conducted comprehensive pre-sentence investigations. This way, the needs of the probationer are met by the capabilities and interests of the volunteers. Other alternatives include group homes which, in addition to individual, group, and family counseling, community involvement and recreation, provide life skills such as job training, employment, remedial education, and training in communication skills, so that the youngsters can adapt to many situations. Children also may be placed in foster homes, where they can continue their education in public schools and jobs, while undergoing therapy with their families. All these programs may provide alternatives to the confinement of a child in a State training school.

CHAPTER 3

LIABILITY FOR VIOLATIONS OF CIVIL RIGHTS

UNAUTHORIZED SEARCHES

Officer E conducts a search of Tommy P.'s room without Tommy's consent because he believes that Tommy's parents' consent is sufficient to authorize the search. Case law in his State and in the Federal courts in his district holds that parental consent is not sufficient.

Can Officer E be held liable for damages from this action?

Officer E may be held liable under the Federal Civil Rights Act for violation of Tommy's constitutional rights. If the law is unsettled in his region, he may be able to use a good faith defense to this liability. If, however, the law is settled, he is expected to have knowledge of the law and to comply with it.

PLACEMENT DECISIONS

Officer F arrests Susan and places her in the county jail. Officer F knows that adults and children have sight and sound contact in the county jail. He also knows that jail fails to provide any kind of recreational facilities or adequate supervision for children. Susan is sexually assaulted while in the jail.

Is Officer F liable under the Federal Civil Rights Act for the sexual assault on Susan?

Under the Federal Civil Rights Act, Officer F can be held liable for consequences of harm in a detention center under certain circumstances. First, if he knows that the jail where he places Susan is inappropriate and violates constitutional standards, he may be liable for placing the child there. Second, if he does not know of the conditions in the jail, but he should know of them, and a reasonable person in his position would know of them, he may be liable. Third, if Susan's arrest were illegal, her placement in the jail would also be illegal, and the officer could be responsible for any consequences of that arrest, including consequences that result from detention in the jail. Of course, the injury must be a foreseeable result of Susan's confinement; Officer F could not be held liable for a car crashing into the jail and injuring Susan.

However, sexual assault is a foreseeable result of confinement without sight and sound separation, so Officer F may be liable for Susan's injuries.

SUPERVISORY LIABILITY

> Tommy and Susan both sue the officers who arrested them and the police department of the city where these officers work in Federal court for a violation of Federal civil rights law.
>
> Are supervising officers, or the city, liable for the actions of either of these officers?

Under the Federal Civil Rights Act, supervisory officials and local governments cannot be held liable under a theory of "respondeat superior." In other words, they are not liable for any action taken by a police officer simply because he was on duty when he took the action. Supervisors may, however, be liable under circumstances where the officer's act is part of a policy, pattern or practice of the agency, or of the city. So, in Tommy's case, if there is a department policy to search children's rooms without consent and without a warrant, supervisors will be liable for the police officer's action that follows that policy. Similarly, if it is departmental policy to confine children in an unconstitutional jail, supervisors will be liable along with the arresting officer for Susan's injuries.

In addition, if the act is the result of a lack of adequate supervision or training, supervisory officials, and the city may also be liable for the arresting officer's actions. If officials have failed to train officers adequately in the constitutional requirements of search and seizure, or have failed to monitor officers to make sure that they are complying with these requirements, they may be liable to Tommy for the search. If they have failed to train and supervise officers in the use of alternatives to detention, and appropriate locations for detention, they would also be liable to Susan.

In many States, whether or not liability falls on the department, the department will indemnify an officer held liable for action taken in the course of duty.

APPENDIX

CASE CITATIONS

Fare v. Michael C., 442 U.S. 707 (1979).

In re Gault, 387 U.S. 1 (1967).

In re Winship, 397 U.S. 358 (1970).

Martin v. Strasburg, 689 F.2d 365 (2d Cir. 1982).

McKeiver v. Pennsylvania, 403 U.S. 528 (1971).

END